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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/567,313 | 02/03/2006 | Saied Abedi | FUJL 22.279 (100794-01011) | 5056 |
| 26304 7590 10/03/2008 KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585 | | | EXAMINER BALAOING, ARIEL A | |
| | | | ART UNIT 2617 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/567,313 | Applicant(s) ABEDI, SAIED | |
| | Examiner ARIEL BALAOING | Art Unit 2617 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32, 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 March 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Objections

2. Claims 1, 2, 3, 10, 17, 18, 24, 25, 28-30 are objected for the following informalities:

Claim 10: line 2 - the limitation "a user equipment" should read "the user equipment", line 4 - the limitation "the amount of data" should read "an amount of data"

Claim 24: line 3 - the limitation "an amount" should read "the amount".

Claim 25: line 4, 5 - the limitation "an amount" should read "the amount".

Claim 28: line 3 - the limitation "a base station" should read "the base station".

Claim 29: line 4 - the limitation "a base station" should read "the base station".

Claim 30: line 3 - the limitation "an indication" should read "the indication".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. Claims 1, 2, 3, 11, 15, 17, 18, 21, 24, 25, 27, 31, 32, and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 11, 15, 21, 27, and 31 recite the limitation "the or each relative indicator" in the body of the claim. The language is not clear as to what this limitation refers to.

Claim 32 is rejected for being dependent on an indefinite claim.

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Claim 34 recites the limitations "a transmitting unit" (see line 10 and 18) and "a receiving unit" (see lines 11 and 20) in the body of the claim. These should read a first and second transmitting/receiving unit, since they are located in either the base station and user equipment.

Claims 1, 2, 3, 17, 18 are rejected for lacking antecedent basis:

Claim 1: line 4 - the limitations "the amount of data" and "the data buffer" should read "an amount of data" and "a data buffer", line 8 - the limitation "the other user equipments" should read "other user equipments", line 10 - the limitation "an active base station" should read "the active base station".

Claim 2: line 3 – the limitation "the average" should read "an average".

Claim 3: line 3 – the limitation "the minimum" should read "a minimum".

Claim 17: line 3 - the limitation "the amount" should read "an amount", line 4 - the limitation "the data buffer" should read "a data buffer".

Claim 18: line 3 - the limitation "the average" should read "an average".

Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-7, 9, 11-21, 23-32, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over VADGAMA (US 2003/0083069 A1) in view of NAIM et al (US 2002/0093953 A1).

Regarding claim 1, VADGAMA discloses a method of selecting an active base station for use during soft handover, the active base station being for receiving data from a plurality of user equipments (abstract), the method comprising: determining an amount of data (paragraph 31-38, 45, 46; various congestion levels are measured); comparing the amount of data to obtain a relative indicator (paragraph 31-38, 45, 46, 75-78, 93-97, 105; comparison of congestion can be based on history and weighted base stations); selecting a base station as an active base station in dependence on the relative indicator (abstract; paragraph 13, 14, 144, 145; congestion based selection). However, VADGAMA does not expressly disclose determining the amount of data in the data buffer of each of the user equipments; comparing the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full a user equipment's data buffer is in comparison to the data buffers of the other user equipments. In the same field of endeavor, NAIM discloses determining

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the amount of data in the data buffer of each of the user equipments (paragraph 27, 28; mobile station sends information regarding the queue length of the mobile transmitter); comparing the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full a user equipment's data buffer is in comparison to the data buffers of the other user equipments (paragraph 31; resource allocation depending on various factors including the amount of data in each station). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify VADGAMA to include the teachings of NAIM, since both inventions relate to reducing congestion within a system (see NAIM - paragraph 9 disclosing buffer levels effecting packet congestion and VADGAMA states that various methods of congestion (such as those disclosed by NAIM) can be used for determination of an active base station (VADGAMA, paragraph 86, 87).

Regarding claim 2, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein the relative indicator is an indication of how full a user equipment's buffer is in comparison to the average (VADGAMA – paragraph 105; NAIM – paragraph 27, 28; VADGAMA shows wherein the relative indicator is an indication of a congestion measurement in comparison to an average, while NAIM shows wherein congestion occurs based on a indicated buffer level of a mobile device).

Regarding claim 3, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further

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discloses wherein the relative indicator is an indication of how full a user equipment's buffer is in comparison to the minimum (NAIM – paragraph 27; segment rate).

Regarding claim 4, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein a plurality of relative indicators are obtained for each user equipment (NAIM - paragraph 31).

Regarding claim 5, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein the comparing is carried out by the base station (VADGAMA – paragraph 31-38, 45, 46; base station provides data comparison; NAIM - paragraph 31).

Regarding claim 6, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses further comprising transmitting the or each relative indicator for each user equipment from the base station to that user equipment (paragraph 31, 32, 53, 54, 93-97, 106; congestion determination broadcast over the broadcast channel to the mobile devices).

Regarding claim 7, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the selecting of a base station is carried out by the user equipment (paragraph 31, 32, 53, 54, 99, 112, 113, 150, 154, 155).

Regarding claim 9, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein a user equipment determines an amount of data in its data buffer and

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transmits an indication of the amount of data to the base station (NAIM – paragraph 27, 28).

Regarding claim 11, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein a base station is selected as an active base station based on a history of the or each relative indicator (paragraph 16, 17, 36, 75-78, 86, 87, 93)

Regarding claim 12, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein a base station is selected as an active base station based additionally on a measure of radio channel conditions (paragraph 16, 17, 36, 75-78, 86, 87, 93, 154).

Regarding claim 13, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein a base station is selected as an active base station based on a history of radio channel conditions (paragraph 16, 17, 36, 75-78, 86, 87, 93)

Regarding claim 14, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the selecting of a base station is carried out by the user equipment, and the method further comprises transmitting an indication of the selected base station from the user equipment to the base stations (paragraph 31, 32, 53, 54, 99, 112, 113, 154, 155).

Regarding claim 15, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further

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discloses further comprising scheduling uplink transmissions in dependence on the or each relative indicator (NAIM – paragraph 26, 27, 31, 32).

Regarding claim 16, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein each user equipment determines a rate and/or time at which it transmits data to the base station based on the or each relative indicator for that user equipment (paragraph 146, 147; time of transmission based on indicator).

Regarding claim 17, VADGAMA discloses a base station for receiving data from a plurality of user equipments (abstract), the base station comprising a determining unit which determines an amount of data (paragraph 35); a comparing unit which compares an amount of data to obtain a relative indicator (paragraph 38, 41, 75-78, 93-97, 105; comparison of congestion can be based on history and weighted base stations); a transmitting unit which transmits the relative indicator (paragraph 37, 41); a receiving unit which receives a signal indicating whether the base station has been selected as an active base station for a user equipment (paragraph 36, 42, 145, 154, 155); and an allocating unit which allocates a channel to the user equipment if the base station has been selected as an active base station (paragraph 13, 14, 38, 44, 144, 145,; congestion based selection). However, VADGAMA does not expressly disclose a determining unit which determines the amount of data in the data buffer of each of the user equipments; a comparing unit which compares the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full a user equipment's data buffer is in comparison to the data buffers of

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the other user equipments. In a similar field of endeavor, NAIM discloses a determining unit which determines the amount of data in the data buffer of each of the user equipments (paragraph 27, 28; mobile station sends information regarding the queue length of the mobile transmitter); a comparing unit which compares the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full a user equipment's data buffer is in comparison to the data buffers of the other user equipments (paragraph 31; resource allocation depending on various factors including the amount of data in each station). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify VADGAMA to include the teachings of NAIM, since both inventions relate to reducing congestion within a system (see NAIM - paragraph 9 disclosing buffer levels effecting packet congestion and VADGAMA states that various methods of congestion (such as those disclosed by NAIM) can be used for determination of an active base station (VADGAMA, paragraph 86, 87).

Regarding claim 18, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein the relative indicator is an indication of how full a user equipment's buffer is in comparison to the average (VADGAMA – paragraph 105; NAIM – paragraph 27, 28; VADGAMA shows wherein the relative indicator is an indication of a congestion measurement in comparison to an average, while NAIM shows wherein congestion occurs based on a indicated buffer level of a mobile device).

Regarding claim 19, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein the relative indicator is an indication of how full a user equipment's buffer is in comparison to the minimum (NAIM – paragraph 27; segment rate).

Regarding claim 20, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein the comparing unit is arranged to produce a plurality of relative indicators for each user equipment (NAIM – paragraph 31).

Regarding claim 21, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the transmitting unit is arranged to transmit the or each relative indicator for each user equipment from the base station to that user equipment (paragraph 31, 32, 53, 54, 93-97, 106; congestion determination broadcast over the broadcast channel to the mobile devices).

Regarding claim 23, VADGAMA discloses a user equipment (abstract) comprising: a data buffer (paragraph 2; a data buffer is inherently necessary when transmitting data from a user terminal to a base station); a transmitting unit **256, 288** which transmits to a base station information (paragraph 31, 32, 53, 54, 93-97, 106; congestion determination broadcast over the broadcast channel to the mobile devices); a receiving unit **236, 266** which receives from a base station a relative indicator (paragraph 37, 41); and a selecting unit **248, 278** which selects the base station as an active base station based on the relative indicator (paragraph 31, 32, 53, 54, 99, 112,

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113, 149, 154, 155). However, VADGAMA does not expressly disclose wherein the transmitting unit transmits to a base station information concerning an amount of data to be transmitted; and wherein the relative indicator indicates how full the data buffer is in comparison to the data buffer of other user equipments served by that base station. In a similar field of endeavor, NAIM discloses and a data buffer (paragraph 27); a transmitting unit that transmits to a base station information concerning an amount of data to be transmitted (paragraph 27, 28; mobile station sends information regarding the queue length of the mobile transmitter); and wherein a relative indicator indicates how full the data buffer is in comparison to the data buffer of other user equipments served by that base station (paragraph 31; resource allocation depending on various factors including the amount of data in each station). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify VADGAMA to include the teachings of NAIM, since both inventions relate to reducing congestion within a system (see NAIM - paragraph 9 disclosing buffer levels effecting packet congestion and VADGAMA states that various methods of congestion (such as those disclosed by NAIM) can be used for determination of an active base station (VADGAMA, paragraph 86, 87).

Regarding claim 24, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses further comprising a determining unit which determines the amount of data in the data buffer, wherein the information concerning an amount of data to be transmitted is an indication of the amount of data in the data buffer (NAIM – paragraph 26, 27).

Regarding claim 25, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses further comprising a determining unit which determines an amount of data to be transmitted in a call, wherein the information concerning an amount of data to be transmitted is an indication of the amount of data to be transmitted in the call (NAIM – paragraph 26, 27).

Regarding claim 26, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the receiving unit is arranged to receive a plurality of relative indicators from a base station (paragraph 154, 155).

Regarding claim 27, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses further comprising a storing unit which stores a history of the or each relative indicator, wherein the selecting unit is arranged to select a base station as an active base station based on a history of the or each relative indicator (paragraph 16, 17, 36, 75-78, 86, 87, 93).

Regarding claim 28, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the selecting unit is arranged to select a base station as an active base station based additionally on a measure of radio channel conditions (paragraph 16, 17, 36, 75-78, 86, 87, 93, 154).

Regarding claim 29, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses further comprising a storing unit which stores a history of radio channel conditions, wherein the selecting unit

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is arranged to select a base station as an active base station based on a history of radio channel conditions (paragraph 16, 17, 36, 75-78, 86, 87, 93, 154).

Regarding claim 30, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses comprising means for a transmitting unit which transmits an indication of the selected base station. (paragraph 31, 32, 53, 54, 99, 112, 113, 149, 154, 155).

Regarding claim 31, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses further comprising a scheduling unit which schedules uplink transmissions in dependence on the or each relative indicator (paragraph 146, 147).

Regarding claim 32, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. VADGAMA further discloses wherein the scheduling unit is arranged to determine a rate and/or time at which data is to be transmitted to the base station based on the or each relative indicator (paragraph 146, 147; time of transmission based on indicator).

Regarding claim 34, VADGAMA discloses a communication system (abstract), comprising: a base station for receiving data from a plurality of user equipments (abstract), the base station comprising a determining unit which determines an amount of data (paragraph 35); a comparing unit which compares an amount of data to obtain a relative indicator (paragraph 38, 41, 75-78, 93-97, 105; comparison of congestion can be based on history and weighted base stations); a transmitting unit which transmits the relative indicator (paragraph 37, 41); a receiving unit which receives a signal indicating

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whether the base station has been selected as an active base station for a user equipment (paragraph 36, 42, 154, 155); and an allocating unit which allocates a channel to the user equipment if the base station has been selected as an active base station (paragraph 13, 14, 144, 145, 38, 44; congestion based selection); and a user equipment (abstract) comprising: a data buffer (paragraph 2; a data buffer is inherently necessary when transmitting data from a user terminal to a base station); a transmitting unit **256, 288** which transmits to a base station information (paragraph 31, 32, 53, 54, 93-97, 106; congestion determination broadcast over the broadcast channel to the mobile devices); a receiving unit **236, 266** which receives from a base station a relative indicator (paragraph 37, 41); and a selecting unit **248, 278** which selects the base station as an active base station based on the relative indicator (paragraph 31, 32, 53, 54, 99, 112, 113, 149, 154, 155). However, VADGAMA does not expressly disclose wherein the base station comprises: a determining unit which determines the amount of data in the data buffer of each of the user equipments; a comparing unit which compares the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full a user equipment's data buffer is in comparison to the data buffers of the other user equipments; and the user equipment: wherein the transmitting unit transmits to a base station information concerning an amount of data to be transmitted; and wherein the relative indicator indicates how full the data buffer is in comparison to the data buffer of other user equipments served by that base station. In a similar field of endeavor, NAIM discloses a base station comprising: a determining unit which determines the amount of data in

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the data buffer of each of the user equipments (paragraph 27, 28; mobile station sends information regarding the queue length of the mobile transmitter); a comparing unit which compares the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full a user equipment's data buffer is in comparison to the data buffers of the other user equipments (paragraph 31; resource allocation depending on various factors including the amount of data in each station); and a user equipment comprising: a data buffer (paragraph 27); a transmitting unit that transmits to a base station information concerning an amount of data to be transmitted (paragraph 27, 28; mobile station sends information regarding the queue length of the mobile transmitter); and wherein a relative indicator indicates how full the data buffer is in comparison to the data buffer of other user equipments served by that base station (paragraph 31; resource allocation depending on various factors including the amount of data in each station). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify VADGAMA to include the teachings of NAIM, since both inventions relate to reducing congestion within a system (see NAIM - paragraph 9 disclosing buffer levels effecting packet congestion and VADGAMA states that various methods of congestion (such as those disclosed by NAIM) can be used for determination of an active base station (VADGAMA, paragraph 86, 87).

7. Claims 8 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over VADGAMA (US 2003/0083069 A1) in view of NAIM et al (US 2002/0093953 A1) and further in view of PARKVALL et al (US 2002/0080719 A1).

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Regarding claim 8, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. However, the combination of VADGAMA and NAIM does not expressly disclose selecting of a base station is carried out by a radio network controller. In the same field of endeavor, PARKVALL discloses selecting of a base station is carried out by a radio network controller (paragraph 15). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combination of VADGAMA and NAIM to include the teachings of PARKVALL, since allowing a network controller to select a base station is standard in the art and allows a base station determination based on received signals at the controller.

Regarding claim 22, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. However, the combination of VADGAMA and NAIM does not expressly disclose wherein the transmitting unit is arranged to transmit the or each relative indicator to a radio network controller. In the same field of endeavor, PARKVALL discloses wherein a transmitting unit is arranged to transmit the or each relative indicator to a radio network controller (paragraph 15). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combination of VADGAMA and NAIM to include the teachings of PARKVALL, since allowing a network controller to select a base station is standard in the art and allows a base station determination based on received signals at the controller.

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8. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over VADGAMA (US 2003/0083069 A1) in view of NAIM et al (US 2002/0093953 A1) and further in view of OYAMA (US 2002/0048258).

Regarding claim 10, see the rejections of the parent claim concerning the subject matter this claim is dependent upon. The combination of VADGAMA and NAIM further discloses wherein a user equipment sends to the base station an indication of the total amount of data to be sent (NAIM – abstract; paragraph 26, 27, 31), however, the combination of VADGAMA and NAIM does not expressly disclose wherein the base station determines the amount of data in the user equipment's data buffer based on the indication of the total amount of data, and the amount of data already received by the base station from that user equipment. In a similar field of endeavor, OYAMA discloses a communication device that determines the amount of data in a device based on an indication of a total amount of data, and an amount of data already received by a communication device from that device (abstract; paragraph 22, 23). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the combination of VADGAMA and NAIM to include the teachings of OYAMA, since it has been held that discovering an optimum value (i.e determining a remainder by subtracting an amount from a known total) of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Double Patenting

9. Claims 18-22 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20-24 of copending Application No. 10/565866. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 20-22 of the copending application are a broader form of claims 17-19 of the instant application and would therefore encompass the claims of the instant application. Differences bolded below:

| Instant Application | Application 10/565,866 |
|---|--|
| 17. A base station for receiving data from a plurality of user equipments, the base station comprising: a determining unit which determines the amount of data in the data buffer of each of the user equipments; a comparing unit which compares the amount of data in the data buffers of the user equipments to obtain a relative indicator, the relative indicator indicating how full a user equipment's data buffer is in comparison to the data buffers of the other user equipments; transmitting unit which transmits the relative indicator; a receiving unit which receives a signal indicating whether the base station has | 20. A base station for receiving data transmissions from a plurality of user equipments, the base station comprising: determining unit which determines the amount of data in a data buffer of each of the user equipments; comparing unit which compares the amount of data in the data buffers of the user equipments to obtain, for each user equipment, a relative indicator, the relative indicator indicating how full that user equipment's data buffer is in comparison to the data buffers of the other user equipments; and transmitting unit which transmits the relative indicator for each user equipment from the base |

| | |
|--|---|
| been selected as an active base station for a user equipment; and an allocating unit which allocates a channel to the user equipment if the base station has been selected as an active base station. | station to that user equipment. |
| 18. The base station according to claim 17, wherein the relative indicator is an indication of how full a user equipment's buffer is in comparison to the average. | 21. The base station according to claim 20, wherein the determining unit is arranged to determine, for each user equipment, an indication of how full that user equipment's buffer is in comparison to the average. |
| 19. The base station according to claim 17, wherein the relative indicator is an indication of how full a user equipment's buffer is in comparison to the minimum. | 22. The base station according to claim 20, wherein the determining unit is arranged to determine, for each user equipment, an indication of how full that user equipment's buffer is in comparison to the minimum. |

Claims 17-19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20-22 of copending Application No. 10/565,866 in view of VADGAMA (US 2003/0083069 A1).

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Claims 17-19 recite the same limitations as those of copending Application No. 10/565,866, except the instant application further discloses an allocation unit which allocates a channel to the user equipment if the base station has been selected as an active base station. In the same field of endeavor, VADGAMA discloses an allocation unit which allocates a channel to the user equipment if the base station has been selected as an active base station (abstract; paragraph 13, 14, 144, 145; congestion based selection). Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify copending Application No. 10/565,866 with the teachings of VADGAMA, since VADGAMA states that such a modification would allow active base station determination based on a plurality of determined congestion levels.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

LOVE et al (US 7,321,780) – Enhanced uplink rate selection

SPALING et al (US 2002/0077113) – Congestion control in a CDMA based system

WILLARS et al (US 6,889,050) – Variable transmission rate services

DILLINGER et al (US 2004/0196809) – System for allowing an effective handover

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LEE et al (US 2003/0045293) – Virtual soft handover in a high data rate network

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ARIEL BALAOING whose telephone number is (571)272-7317. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, V. Paul Harper can be reached on (571) 272-7605. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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